

1 MR. PRUSAK: No, Your Honor.

2 (Defendant conferring with his attorney.)

3 THE COURT: The probation officer's comments and
4 analysis of the conduct of Mr. Rodriguez with regard to the
5 Brittany Nathan letter I believe is well founded, and I
6 believe the recommendation for obstruction of justice is well
7 founded as well.

8 In addition to that, Mr. Rodriguez testified falsely
9 at his hearing with regard to his request to withdraw his
10 guilty plea. He found it necessary to testify falsely with
11 regard to statements that he claims his attorney made, and his
12 testimony is not only not credible, it's false and it was
13 willful for the purpose of attempting to induce me to allow
14 him to withdraw his plea.

15 Mr. Rodriguez has always had the capability of
16 speaking out when it's necessary to speak out to make sure
17 that his rights are fully protected. He spoke out this
18 morning. He's done that throughout the time that I presided
19 over this case. He has no hesitation. He's fully competent,
20 fully capable of bringing matters to the Court's attention. I
21 don't find him to be a weak-minded person at all.

22 So, consequently, it seems to me he did attempt to
23 obstruct justice and, consequently, it seems to me that the
24 Probation Office's recommendation is appropriate.

25 Mr. Rodriguez has not accepted responsibility for his

1 conduct, and, consequently, the recommendation to not provide
2 him the additional reduction for acceptance of responsibility
3 is appropriate.

4 I believe that the Probation Department has
5 accurately suggested the appropriate sentencing calculations
6 under the sentencing guidelines, providing us with a total
7 offense level of a level 34. And because of Mr. Rodriguez's
8 prior criminal history, the convictions that are part of his
9 criminal history, he falls within a criminal history category
10 of a II, and that takes us to a sentencing guideline range of
11 168 to 210 months.

12 All right. Having determined the appropriate
13 sentencing guideline range, then I want to move to the next
14 phase of the sentencing procedure which is to first hear from
15 defense counsel, then from the government, and then from Mr.
16 Rodriguez himself before I determine the appropriate sentence
17 in his case.

18 MR. PRUSAK: You know Mr. Rodriguez's history better
19 than probably most defendants that have been before you,
20 because he's been before you for such a long amount of time.
21 He's been here on many different occasions, Judge. It's
22 contained within the presentence investigation. It's also
23 contained within Dr. Gutzmann's report.

24 Again, I would like Your Honor to take into account
25 his involvement in the offense, the psychological or emotional

1 capacity that he has, the childhood that he's gone through,
2 and the fact that all of the convictions I believe he has had
3 have been for nonviolent offenses.

4 There was one case that was set for trial this
5 morning in the Skokie courthouse in Cook County. The
6 co-defendant I believe had pled guilty to that. It's our
7 contention that Mr. Rodriguez would have been found not guilty
8 had he been able to go to trial before the sentencing date.

9 We're asking Your Honor to give him the minimum of
10 168 months under the guidelines. I don't think there's any
11 risk that Mr. Rodriguez is a threat to the community. I don't
12 think he's going to be facilitating any drug deals when he
13 gets out. I think he needs treatment while he's incarcerated,
14 and I think that the minimum would be appropriate here.

15 THE COURT: All right. I have not taken into account
16 anything with regard to the alleged offense that Mr. Rodriguez
17 was arrested on which caused me to revoke his bond in
18 connection with the determination as to his sentencing
19 guideline range or with regard to the sentence. So whatever
20 occurs, I'm basically continuing to presume him to be innocent
21 of that offense. However, since there was probable cause to
22 believe that he engaged in that offense, his bond was revoked.

23 But I'll hear from the government with regard to this
24 case.

25 MR. NIEWOEHNER: Your Honor, Mr. Rodriguez is a prime

1 example of a defendant who can't or won't accept
2 responsibility for what he's done. It began when he was
3 initially arrested in this case -- I mean, if you look at --
4 his initial involvement was someone who was free and willing
5 to be a part of a drug deal.

6 THE COURT: Yes.

7 MR. NIEWOEHNER: It began when he was originally
8 stopped. He gave a partial confession, which he did not fully
9 give the truth, but I will say he did provide some indicia
10 that he knew he was involved. He had -- he sort of went on a
11 spiral downward from that moment.

12 He -- while on bond, he had -- he seems to want to
13 blame this on Brittany Nathan. He had physical interactions
14 with her which she complained to Agent DiPodesta which
15 culminated in her getting an order of protection against him.

16 His next step was to get himself arrested, violating
17 the conditions of his bond, not just because he was arrested,
18 but because he was out in the middle of night as you had
19 specifically told him not to do. Then his next step is to
20 write a threatening letter which speaks for itself.

21 His final step, even after he pleads, he talks to
22 Probation, he again is pointing the finger at Brittany Nathan,
23 demanding to know why she's not indicted and why she's not the
24 person before the Court.

25 He then tries to withdraw his guilty plea, perjuring

1 himself in the process, again trying to shift something about
2 Brittany Nathan and how she was being threatened.

3 And the theme of this defendant, Your Honor, is
4 somebody who will blame his lawyers, who will blame Brittany
5 Nathan, who will blame everybody but himself, and that's a
6 troubling fact when you look at some of the statements and
7 conduct he does have, that there is a suggestion that he can
8 be a dangerous person.

9 When he was found, he had all the gun paraphernalia,
10 though we could not find a gun. His statements on tape that
11 I've attached in the government's version where he makes,
12 frankly, murderous statements about Brittany Nathan, followed
13 up by his physical acts, his written letter, all these things
14 suggest, Your Honor, a person who until the moment when he can
15 actually look at himself and acknowledge he did something
16 wrong, he is a threat to other people around him, whether it's
17 Brittany Nathan or anybody else.

18 Therefore, Your Honor, the government would suggest
19 that a range between the midpoint and the high end of the
20 range would be appropriate in this case.

21 THE COURT: All right. Mr. Rodriguez, before I
22 determine the appropriate sentence in your case, I want to
23 hear from you.

24 THE DEFENDANT: All I can see, Your Honor, is I'm
25 getting -- I'm being tortured here by the prosecution like I'm

1 some mutant. I've been on bond for so long, if he says I was
2 murderous or did it to the community, why haven't I killed
3 anybody? As he says how murderous I am, why haven't I beat
4 anybody up or put anybody in the hospital? If that was the
5 case, my record would show that I violated my bond for hurting
6 somebody or I killed somebody or caused somebody danger.

7 When I was on bond, I was helping feed the homeless
8 at a center in the south side. I don't see how that's a
9 danger to the community if I'm helping feed the homeless. And
10 I can verify it and have the people who own the shelter come
11 speak on my behalf.

12 And I asked my attorney also, and I don't know why
13 they keep bringing up Brittany Nathan if that was the case,
14 why don't they have her come here and speak for herself to
15 show what kind of person I am?

16 As Your Honor has seen, many times her mother came to
17 court. I didn't put to gun to her head or threaten her, "You
18 have to come to court or I'm going to kill you," or anything.
19 And when she seen Your Honor, she spoke on my behalf. Her
20 mother has came here several times.

21 So I don't see why if I don't -- I think that's
22 uncalled for, that what the prosecution has said, because if
23 I've been on bond so long, well, how come I haven't did
24 anything what the prosecution said?

25 As a matter of fact, when I was on bond, I was

1 working in downtown. I was working for Cara Seta (sic),
2 delivering copy machines. I've been all over downtown.

3 THE COURT: What was that company?

4 THE DEFENDANT: Cara Seta, Cara Seta, Cook County
5 Photocopy. It's -- we sell Mita, Cara Seta machines. I was a
6 delivery person. I, in fact, delivered machines all over
7 downtown. That's -- when I was on bond, I delivered a couple
8 machines to city hall.

9 So if I was that dangerous, what would I be doing in
10 city hall where the mayor is at of all people? And I also
11 delivered a couple machines to aldermans. So if I was that
12 much of a danger, why was I given a bond and why was -- why
13 was I interacting with the community? I didn't cause anybody,
14 you know -- and my record shows it.

15 That's why I feel that your prosecution, you know,
16 I'm murderous, I mean, that's kind of really uncalled for. I
17 mean, I don't have any bias in my background. I mean, I never
18 killed nobody, I never hurt nobody. I don't use drugs. Even
19 though I do take some pills, you know, here and there, you
20 know, for my mental, my mental state. But otherwise than
21 that, I believe that's really -- I believe that's a shot, you
22 know, hitting below the belt there, Your Honor. My record
23 speaks for itself. I mean --

24 THE COURT: Anything else?

25 THE DEFENDANT: I guess that's all I have to say.

1 I would wish, I would wish that my brother was here
2 to speak of that and my mother, but I don't know why they're
3 not here today. They said they were going to come, that
4 they -- to speak to my behalf to, you know, to, you know, my
5 prosecution. I don't know how the prosecution could speak for
6 them if they're not here.

7 I think it would be kind of fair, you know,
8 justice-wise to have them speak, you know, in open court to
9 Your Honor on how -- what kind of person I was instead of
10 hearing prosecution trying to interpret it, what kind of
11 person I am, you know, if they're not here.

12 How can he speak for somebody if he doesn't -- you
13 know, he didn't speak to them personally of what kind of
14 person I am? I don't understand.

15 THE COURT: Anything else?

16 THE DEFENDANT: That's all I got to say.

17 THE COURT: Anything else from any counsel?

18 MR. NIEWOEHNER: No, Your Honor.

19 MR. PRUSAK: Just he's the village idiot, Judge.

20 He's just as harmless as a village idiot. The stuff that
21 comes out of his mouth, every day I come here and I'm
22 wondering what's going to happen next. It's like being on a
23 ship with a loose cannon. You don't know where it's going to
24 roll.

25 I don't think you should punish him for his idiocy.

1 I think the guidelines, the minimal sentence under the
2 guidelines is sufficient to send a message to Mr. Rodriguez
3 that he did wrong and he should accept responsibility for
4 that, but to give him any additional time, Your Honor, I don't
5 think is really appropriate with this defendant under these
6 circumstances.

7 I mean, we all know him so well. I mean, it's become
8 almost a joke watching him, but it's a real sad joke, Judge.
9 And to give him more time because he's an emotional midget I
10 don't think would be fair and just. I think the 168 months
11 would be sufficient.

12 THE COURT: Anything further, Mr. Rodriguez?

13 THE DEFENDANT: I like to know with my brother's
14 cooperation with the government, if that's going to benefit me
15 anyhow and giving me somewhat a downward departure. That's
16 what my brother -- according to the prosecution, he said that
17 he's given them a lot of information pertaining to some other
18 cases, so I have to know about that, because I don't -- my
19 attorney's not telling me anything, so I'm going to ask Your
20 Honor if that's going to -- how is that going to affect my
21 case and some downward departure.

22 THE COURT: Your brother's cooperation was your
23 brother's cooperation. I'm aware of your brother's
24 cooperation. There will not be a downward departure because
25 of your brother's cooperation. I'm sentencing you within the

1 guideline range.

2 But before I make the determination as to what the
3 appropriate sentence is within the guideline range, I want to
4 hear anything further you want to say.

5 THE DEFENDANT: Who, me?

6 THE COURT: Yes, you.

7 THE DEFENDANT: Oh, well, well, when I first got in
8 trouble with the government, the agents said if I knew anybody
9 who give, you know, give information to, you know, bring
10 cases, it would benefit me. When I go to sentencing, I will
11 get less time if -- that's all according to them.

12 I don't know if who -- I don't know, every time I
13 speak, you know, everybody's calling me a liar, I might get an
14 obstruction of justice or something. But my brother was here
15 this morning. I don't know why he's not here, I don't know
16 why he's not here to speak on my behalf to say, you know, what
17 the government said, because I'd rather him tell Your Honor.
18 That way, I wouldn't be accused of lying.

19 You know, that's what I told my brother, that by him
20 giving information, it will benefit me somehow when I get
21 sentenced. I don't see how it's benefiting me anything by him
22 getting -- cooperating with the government. I don't
23 understand.

24 According to what the agents who are sitting here in
25 court told me and my brother, my brother put his life on the

1 line and jeopardized my family, also my mother and my father,
2 the information he's gave to the government.

3 He was just here this morning. I don't know where
4 he's at. Maybe he could speak on my behalf.

5 I wish these people were here, Your Honor, to speak
6 on my behalf, but --

7 MR. PRUSAK: Is there anything else you want to say?

8 THE DEFENDANT: I wish I -- I wish they were here. I
9 mean, there might have been some way that, you know, they
10 could -- I thought at sentencing I could have people speak on
11 my behalf. I don't see anybody here. I don't -- they were
12 just here, but --

13 THE COURT: If he was here, he could speak on your
14 behalf, but he's not here. You say he was here this morning.
15 I don't remember him being here during the proceedings. He
16 came in at some point in time after the proceedings, and my
17 clerk told him that it would start again at 1:30. We moved
18 this to 1:30 because you needed more time to review the
19 Presentence Investigation Report.

20 Is there anything else you want to say?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: All right. Pursuant to the Sentencing
23 Reform Act of 1984, it is the judgment of the Court that the
24 defendant, Frank Rodriguez, is hereby committed to the custody
25 of the Bureau of Prisons to be imprisoned for 180 months on

1 Count 1.

2 It is further ordered that the defendant shall pay a
3 fine of \$500 with payments to begin immediately. Any portion
4 of the fine that's not paid by the time the defendant's
5 released from imprisonment shall become a condition of
6 supervision.

7 It's ordered that the defendant pay the special
8 assessment of \$100. That's also due immediately and must be
9 paid before any payment toward the \$500 fine.

10 The reason that the fine is not even the minimal fine
11 is the defendant does not have the financial capability of
12 paying even the minimum fine under the guidelines.

13 Upon release from imprisonment, Mr. Rodriguez, you
14 are to be placed on supervised release for a term of three
15 years.

16 Within 72 hours of your release from the custody of
17 the Bureau of Prisons, you are to report to the Probation
18 Office in the district in which you are released or to the
19 Probation Office here in this district if you can return to
20 the district within that same 72-hour period, but you must
21 report to a Probation Office within that period of time.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. While you're on supervised
25 release, you are not to commit another federal, state, or

1 local crime. You are to comply with all the standard
2 conditions of supervised release.

3 Also, you are to refrain from any unlawful use or
4 possession of a controlled substance.

5 You're to submit to 1 drug test within 15 days of
6 your release from imprisonment and random and periodic drug
7 tests thereafter conducted by the United States Probation
8 Department, not to exceed 104 drug tests per year, each year
9 of your supervised release.

10 You are not to possess a firearm or destructive
11 device.

12 You are to comply with the following special
13 condition as well. You are to participate in a mental health
14 treatment program at the direction of the probation officer.
15 I believe that you can obtain some assistance from the mental
16 health treatment program, but you yourself must be willing to
17 accept that assistance.

18 Also, I'm going to require as a special condition
19 that you along with your co-defendants, Castillo and Barrera,
20 pay back to the government \$3,000 in buy money as a special
21 condition of your supervised release pursuant to 18 U.S.C. §
22 3583(d). Any payment made by Mr. Castillo or Mr. Barrera will
23 be credited toward you, and likewise any payment by you will
24 be credited toward them. The priorities of payment will be
25 that the \$100 special assessment must be paid first, then the

1 buy money must be paid back next, and then the \$500 fine will
2 be paid, will be credited toward you.

3 You do have a right to appeal from the decisions that
4 I have made in connection with your case.

5 Do you understand that, Mr. Rodriguez?

6 THE DEFENDANT: Oh, yes.

7 THE COURT: And in doing so, filing a notice of
8 appeal, you should file that notice within ten days of today
9 with the United States District Court Clerk.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. Is there anything else we need to
13 take up today?

14 MR. NIEWOEHNER: Your Honor, the government moves to
15 dismiss Count 2 of the indictment.

16 THE COURT: All right. Count 2 will be dismissed.

17 Let me ask the probation officer.

18 MS. COX: Your Honor, just for clarification, did you
19 say three years' supervised release?

20 THE COURT: Yes.

21 MS. COX: I believe I see in the record that it
22 stated three years, but I believe the statutory requirement is
23 five years.

24 THE COURT: There is a statutory requirement of five
25 years?

1 MS. COX: Of at least five years, Your Honor.

2 THE COURT: All right. Well, if the statute requires
3 it, there really isn't much I can say about it.

4 Perhaps we could clarify that point. What statute
5 are you referring to?

6 MS. COX: That's 21-841(b)(1)(C).

7 THE COURT: All right. Let me ask government counsel
8 what's your position on it?

9 MR. NIEWOEHNER: Your Honor, I neglected to bring my
10 statute book up. That does square with my memory.

11 THE COURT: Yes. I was looking at the
12 Recommendations section of the Probation Department.

13 MS. COX: I apologize for that error, Your Honor.

14 THE COURT: Let me review one other item.

15 (Pause.)

16 THE COURT: What's happening?

17 A DEPUTY MARSHAL: Do you want him out here, Your
18 Honor?

19 THE COURT: No, no, I don't.

20 Mr. Rodriguez is being handcuffed because he's
21 becoming irritated. He may be handcuffed --

22 MR. PRUSAK: Judge --

23 THE COURT: -- but I need to have Mr. Rodriguez back
24 in here.

25 A DEPUTY MARSHAL: Pardon me, Your Honor?

1 THE COURT: I need to have him back in here.

2 A DEPUTY MARSHAL: He was starting to go, he started
3 or was going to go off, so --

4 THE COURT: Okay.

5 A DEPUTY MARSHAL: -- I opened the cuffs on him,
6 please.

7 THE COURT: All right. No, please, you can cuff him.

8 If the marshal believed that he was about to take
9 action against some individual, then that's certainly
10 consistent activity by the marshals to handcuff him.

11 All right. It seems to me under the statute that the
12 minimum period of supervised release for this offense is five
13 years, that the Recommendations section that I was relying
14 upon actually is in error, and that the supervised release
15 should last for a period of five years pursuant to the
16 statutory mandate, and so, consequently, the period of
17 supervised release will be five years.

18 Do you understand that, Mr. Rodriguez?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. Anything else?

21 MR. PRUSAK: Yes, Your Honor.

22 I believe Mr. Rodriguez wishes to have me relieved as
23 his attorney. I think he wants to handle the appeal with
24 himself or another counsel, so I would be asking to withdraw
25 at this time pursuant to his wishes.

1 THE COURT: Is that your request, Mr. Rodriguez?

2 THE DEFENDANT: Yes, it is, Your Honor.

3 THE COURT: All right. You understand that you will
4 then have the responsibility to file the notice of appeal with
5 the Clerk's Office of the United States District Court within
6 the statutory period if I allow your attorney to be relieved
7 from further responsibility in connection with this case? Do
8 you understand that?

9 THE DEFENDANT: You mean me or if I get a new
10 attorney?

11 THE COURT: You have the responsibility to do that.
12 If you hire a new attorney between now and the time that the
13 notice of appeal is filed, then your attorney will have the
14 responsibility to comply with the law and with your wishes.
15 If you wish to file a notice of appeal, then your attorney can
16 carry out that responsibility for you and will understand how
17 to do it. But if you don't hire a new attorney between now
18 and ten days from now, you have the responsibility to have
19 that accomplished.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. Are you going to hire a new
23 attorney?

24 THE DEFENDANT: Well, I'm going to try.

25 THE COURT: Okay. All right. All right. Well, if

1 it's your wish to have Mr. Prusak relieved, then I will
2 relieve him from further responsibility.

3 Is that your wish?

4 THE DEFENDANT: If I get a new attorney, does he give
5 him all the paperwork from him or -- when I hire a new
6 attorney or --

7 THE COURT: You'll have to work that out with Mr.
8 Prusak and the new attorney.

9 THE DEFENDANT: Well, Your Honor --

10 THE COURT: I'm sorry?

11 THE DEFENDANT: No, I'm just -- I'm trying, you know,
12 to ask a legal question of when I get a new attorney, does he
13 have the right to get that paperwork?

14 THE COURT: And I am saying that you'll have to work
15 that out with Mr. Prusak and the new attorney.

16 MR. PRUSAK: I will turn over any and all documents
17 in my possession to the new attorney.

18 THE COURT: All right. Then that's worked out.
19 Anything else?

20 THE DEFENDANT: Yes, Merry Christmas and Happy New
21 Year.

22 THE COURT: All right. Thank you.

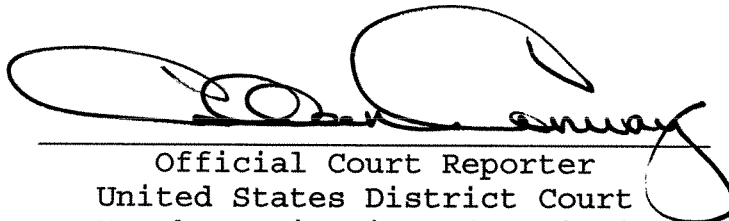
23 We'll stand in recess.

24 MR. PRUSAK: Your Honor, I'm relieved?

25 (Proceedings concluded.)

C E R T I F I C A T E

I, Colleen M. Conway, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the Honorable JAMES F. HOLDERMAN, one of the judges of said Court, at Chicago, Illinois, on December 17, 2002.



Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

3/6/03
Date